

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATIONS No 2191 to 2198 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE D.P.BUCH

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

THE MUNICIPAL CORPORATION

Versus

THE AHMEDABAD DISTRICT CO-OP ERATIVE BANK LIMITED

Appearance:

1. Special Civil Applications No. 2191 to 2194,
2196 and 2198 of 1983
MR JR NANAVATI for Petitioner
MR Yatin Soni for Respondent No. 1
 2. Special Civil Application No 2195 & 2197 of 1983
MR JR NANAVATI for Petitioner
Respondents served
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CORAM : MR.JUSTICE M.H.KADRI
and

Date of decision: 08/08/2000

C.A.V. (COMMON) JUDGMENT (per Buch, J.)

The petitioner Municipal Corporation, Ahmedabad has filed these Special Civil Applications under Article 227 of the Constitution of India in order to challenge the judgments and orders of different dates rendered by the learned Chief Judge, Court of Small Causes at Ahmedabad in different Municipal Valuation Appeals fixing the Gross Rateable Value (for short 'GRV') of the premises occupied by the respondents as follows:

A. In Special Civil Application No.2191/83, the property involved is s.no.19/1 situated in Dariapur-Kazipur Ward No.1 having an area of 34.2 sq. metres on ground floor and 85 sq. metre in the cellar. The agreed rent is Rs.535/-. The GRV assessed by the petitioner was Rs.8916/- for the assessment year 1981-82. The learned Judge fixed the GRV at Rs.1692/by fixing rent of this premises at Rs.2.50 paise per sq. metre and at Re. one per sq. metre for ground floor and cellar respectively in Municipal Valuation Appeal No. 2797/81 through his judgment and order dated 16.3.1983. There the learned Judge fixed the rent for ground floor and cellar at Rs.85/- and 56/respectively and assessed annual rent at Rs.1692/(85+56 =141 x 12 = 1692). The GRV was accordingly fixed at Rs.1692/- by allowing the said appeal by the learned Judge.

B. In Special Civil C.A. No.2192/83, the property involved is survey no.513+461 (old)/574+578(new) situated at Bramminvas, Rakhial, Ahmedabad, having an area of 32 sq.ft., 28 sq.mt. and 37 sq.mt. at the first floor, ground floor and basement respectively. The agreed rent was Rs.915/- per month. The GRV assessed by the appellant was Rs. 14,834/- for the assessment year 1981-82. The learned Judge fixed the GRV at Rs.1584/in M.V.Appeal No. 93/82 on 9.2.1983.

C. In Special Civil C.A. No.2193/83, the property involved is s.no. 415/A/53/1 situated at Rakhial, Ahmedabad having an area of about 600 sq. ft. The agreed rent was Rs.326/- per month.

The GRV assessed by the appellant was Rs.5356/- for the assessment year 1981-82. The learned Judge fixed the GRV at Rs.1344/in M.V. Appeal No.951/81 on 4.2.1983.

D. In Spl. C.A. No. 2194/83, the property involved is s.no. 150 to 152/26/2 situated at Maninagar, Ahmedabad having an area of 677 sq.ft. The agreed rent was Rs.505 per month with effect from 21.12.1971. The GRV assessed by the petitioner was Rs. 9727/- for the year 1980-81. The learned Judge fixed the GRV at Rs. 1890/- in M.V. Appeal No.1323/82 on 21.1.1983.

E. In Special CA No.2195/83, the property involved is situated Opp.Dariapur Gate, Ahmedabad having an area of 567 sq.ft. in cellar and 365 sq.ft. on ground floor. The agreed rent was Rs.535/oper month with effect from 1.12.1975. The GRV assessed was Rs.8916./for the year 1981-82. The learned Judged fixed the GRV at Rs. 1962/in M.V. Appeal No.295/81 on 16.2.1983.

F. In Special CA No.2196/83, the property involved is s.no. 150 to 152/26/2 situated at Maninagar, Ahmedabad having an area of 677 sq.ft. The agreed rent was Rs. 505/- per month with effect from 21.12.1971. The GRV assessed was Rs. 9727/- for the year 1981-82. The learned Judge fixed the GRV at Rs. 1890/- in MV Appeal No.94/82 on 21.1.1983.

G. In Special CA No. 2197/83 the property involved is s.no.415/A/53/1 situated at Rakhial Ward No.1, Ahmedabad having an area of 56 sq.mt. The agreed rent was Rs. 326/- per month with effect from 16.11.1979. The GRV assessed was Rs.5287/- for the year 1981-82. The learned Judge fixed the GRV at Rs.1344/in M.V. Appeal No.108/82 on 21.1.1983.

H. In Special C.A. No.2198/83 the property involved is s.no. 492/part/A-35 of ward Ellisbridge (self-acquired property) situated at opp.Nehru Bridge, Ashram Road, Ahmedabad. The GRV assessed was Rs. 11059/for three rooms. The respondent is a Sales Tax expert and the learned Judge fixed the GRV at Rs. 936/in M.V. appeal no.2580/80 on 19.1.1983.

2. In fact the petitioner had, after following due

procedure of law, fixed the GRV in respect of the above referred properties of the respondents as aforesaid for the said official years. The respondents had filed objections against the aforesaid assessments which were considered by the Appellate Officer who confirmed the said GRV. Feeling aggrieved by the aforesaid assessments, the respondents preferred the aforesaid Municipal Valuation Appeals before the Court of Small Causes at Ahmedabad under section 406 of the Bombay Provincial Municipal Corporation Act, 1949 (for short 'the Act').

3. The learned Judge, after hearing the parties found that the property tax of the Municipal Corporation was paid by the present respondents separately. That another branch of the present respondent bank situated in Kankaria area had preferred M.V. Appeal No. no.245/81 against fixation of GRV at Rs.8400/- by the present petitioner. That the said appeal was allowed and the GRV was fixed at Rs.4992/-. That the present respondents preferred First Appeal No.1503/81 before this Court and this Court, by judgment dated 15.2.1982, fixed the GRV at Rs.3036/fixing the reasonable rent of the aforesaid premises at Rs.2.50 paise per sq. metre. The learned Judge observed that in the aforesaid matters before him, the properties in question were situated in different localities at Ahmedabad. Therefore, the learned Judge considered the said area on par with the area comprised in the aforesaid First Appeal No.1503/81 and fixed the annual rent of the aforesaid premises as indicated hereinabove. Accordingly the GRV was fixed in terms of the aforesaid discussion. Ultimately, the GRV fixed by the learned Judge was lower than the GRV fixed by the petitioner which can be gathered from the said narration.

4. The present petitioner felt aggrieved by the aforesaid judgments and orders of the learned Chief Judge and hence has preferred these Special Civil Applications since the judgments are not appealable.

6. It has been mainly contended here that the learned Judge has committed error in reducing the GRV as aforesaid in respect of the premises in question. That, the lower Court has erred in relying upon the judgment of this Court in FA No.1503/81 which relates to the property situated in a different locality. That, the lower court has erred in fixing the amount of rent as reasonable monthly rent in respect of the properties in question. That the lower court has erred in not appreciating the position that the present respondent did not lead any evidence to challenge the GRV of the premises in question

fixed by the present petitioner. That, the judgment and order of the learned Chief Judge, Small Causes Court, Ahmedabad are therefore illegal and erroneous and deserve to be quashed and set aside and the present petitions deserve to be allowed with costs.

6. We have heard the arguments advanced by M/s.A R Thakker, learned Advocate for the petitioners in all the matters and Yatin Soni, learned Advocate for the respondents except in SCA Nos. 2195 and 2197 of 1983. We have perused the papers including the affidavit-in-reply filed on behalf of the respondent.

7. It is very apparent that the judgment of this High Court fixing the GRV in respect of the property in dispute in the above matter has been wrongly applied by the learned Judge in order to decide reasonable rent and GRV in respect of the premises in question in these Special Civil Applications. All are situated in different localities. The present respondents had not produced any evidence before the learned Judge in order to show that the contractual rent is excessive and hence it should not be taken into consideration for the purpose of fixing GRV in respect of the premises in question. Therefore, there was no reason or evidence for the learned Judge to reduce and fix the GRV in respect of the premises in question in these Special Civil Applications on the basis of the GRV fixed by this Court in FA No.1503/81.

8. Moreover, this Court had decided in FA No.1503/81 (Coram : S L Talati, J.) in the matter between the parties, who are incidentally the parties before this Court in these Special Civil Applications also (except in Special Civil Application No. 2198/83 that it was the duty of the Municipal Corporation to lead evidence before the Court of Appeal (under section 406 of the Act) in order to justify the GRV fixed by it. The above decision was discussed in the case of the Municipal Corporation of the City of Ahmedabad v. Oriental Fire and General Insurance Co.Ltd. reported in 1994(2) XXXV (2) GLR 1498. The Division Bench of this Court, comprising of B N Kirpal, C.J.(as His Lordship then was) and R K Abichandani, J. has clearly overruled the said decision of FA No.1503/81 and has laid down that even in appeal before the appellate authority under the Act, it is for the owner to prove his case by producing evidence before the Court showing that the GRV fixed by the present petitioner is not in accordance with law. The Court also observed as under:

"We cannot read the judgment of Talati, J. to mean that in every case before the Small Causes Court, the onus of proof will be on the Corporation"

In the premises, we are not convinced by the arguments advanced by Mr Yatin Soni, learned Advocate for the respondent that this Court should dismiss this Special Civil Application since the present petitioner did not produce any evidence or material before the Small Causes Court in order to justify the fixation of GRV in respect of the property in question before us in view of the principles laid down in the decision of the Division Bench of this Court referred to hereinabove holding that the duty remains on the shoulders of the owner of the property to prove that the GRV fixed is on higher side. It is more so when the GRV has been fixed in respect of the property in question before us on the basis of the agreed rent paid by the present respondent.

9. In the appeal before the Small causes Court, the present respondent, being appellant, therein, did not discharge this burden and did not produce any material or evidence before the Court in order to argue that the agreed rent and the GRV fixed on that basis by the present petitioner was excessive. Therefore, the learned Judge committed serious illegality in reducing the GRV fixed by the present petitioner without any evidence or material before it showing that the GRV fixed by the present petitioner was on higher side.

10. The learned Advocate for the petitioner has also relied upon a decision of the Division Bench of this Court (Coram: MR Calla & RP Dholakia, JJ) in Special Civil Application No.4161 of 1983 dated 5.4.1999 in the matter between the Ahmedabad Municipal Corporation v. Ahmedabad District Cooperative Bank Ltd. reported in 2000 (2) GCD 1039 wherein the Court observed as follows:

"The Municipality had assessed the Rateable Value taking into account the rent which was in fact paid by the respondent-Bank for the premises which had been taken by it on rent. No material whatsoever was placed by the respondent Bank before the Municipal Corporation to show that the rent, which was being paid by it was excessive and that the same should not be made the basis for determining the GRV. In such a situation, when the Ahmedabad District Cooperative Bank Ltd. preferred Appeals before the Small Causes Court,

Ahmedabad, the Small Causes Court has simply reduced the GRV to a considerable extent, in some cases it has been reduced even down to 1/6th by making a bald reference to the aforesaid decision in the case of Devan Daulat Rai Kapoor (supra) without considering that the principles laid down in the case of Devan Daulat Rai Kapoor (supra) had no application whatsoever to the controversy involved in the case. A bald reference has also been made to an unreported decision of this Court and without giving details of such an unreported decision of this Court and without giving details of such an unreported decision and without even saying that the land in question was identical or in the neighbourhood of the land, which was concerned in such unreported decision, it has determined the rent at the rate of Rs.1.50 per sq. mt. and in one of the cases it has come to the conclusion that the rent comes out to be Rs.48/- per month instead of Rs.200/- per month and on that ground the GRV has been reduced from Rs.5776/- to Rs.3091/-. Identical reasoning had been applied in all these cases and on that basis alone the GRV has been reduced to a considerable extent. We find that there was no material before the authority to reduce the GRV in the manner in which it has been reduced."

In other words, the principle laid down in 1994 (2) GLR 1498 (supra) has been followed in the aforesaid matter also.

11. Mr Yatin Soni has argued that this Court had remanded the matter to the Court of Small causes in FA No.5185/98 (order dated 22.12.98 Coram: HR Shelat, J.) in a case between Ahmedabad Municipal Corporation v. Ahmedabad District Cooperative Bank Ltd. and this court may also remand the matter to the Small Causes Court for fresh consideration. We do not agree with this argument. In the aforesaid matter the GRV fixed by the present petitioner was totally quashed by the Court, which amounted to zero assessment on the ground that special notice was not served upon the respondent in that matter. The facts are not similar or identical in the case before us. Hence there is no necessity for us to remand the matter back to the Small Causes Court.

12. In the facts and circumstances of the case, it is

absolutely clear that the learned Chief Judge, Small Causes Court at Ahmedabad, has committed error in the eye of law in reducing the GRV fixed by the present petitioner without any evidence or material produced before him by the present respondent. The judgment and order of the learned Judge, being illegal and erroneous, deserve to be quashed and set aside by exercising extra-ordinary powers and jurisdiction under Article 227 of the Constitution of India in order to prevent failure of justice.

13. This petition is therefore, allowed. The judgement and order of the learned Chief Judge, Court of Small causes at Ahmedabad in M.V. Appeals No.2797/81 dated 16.2.1983, 93/82 dated 9.2.1983, 951/81 dated 4.2.1983, 1232/82 dated 21.1.1983, 295/81 dated 16.2.1983, 94/82 dated 21.1.1983, 108/82 dated 21.1.1983, 2580/80 dated 19.1.1983 and 2578/80 dated 19.1.1983 are hereby quashed and set aside.

It may be clarified here that this decision will apply only to the Assessment Years in dispute in these Special Civil Applications.

Rule is made absolute. There shall be no order as to costs.

[M H Kadri, J.]

[D P Buch, J.]

msp.